

REMARKS

Claims 6-13 and 16 were pending when the present Office Action was mailed on February 11, 2011. In this response, no claims have been amended, canceled or added in this response. Accordingly, claims 6-13 and 16 are currently pending.

In the Office Action dated February 11, 2011, claims 6-13 and 16 were rejected. More specifically, the status of the application in light of this Office Action is as follows:

- (A) Claims 6, 9, 12 16 were rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims in US Patent Nos. 6,977,504 and 7,026,927;
- (B) Claims 6-13 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement; and
- (C) Claim 16 was rejected under 35 U.S.C. § 103(a) over the combination of U.S. Publication No. 2003/0122653 to Dimmer ("Dimmer") and U.S. Patent No. 6,362,737 to Rodgers et al. ("Rodgers").

As a preliminary matter, the undersigned representative respectfully requests an Examiner's telephone interview prior to further substantive examination or issuance of a second Office Action in order to further prosecution of the pending application.

A. Response to the Double Patenting Rejection of Claims 6, 9, 12 16

The Examiner rejected claims 6, 9, 12 and 16 under the doctrine of obviousness-type double patenting as allegedly being unpatentable over the claims of U.S. Patent Nos. 6,977,504 and 7,026,927.

The applicants respectfully submit that pending claims 6, 9, 12 and 16 are not obvious in light of the claims of the foregoing patents. The applicants accordingly do not concede to the merits of these rejections. Nonetheless, in the interest of expediting prosecution of the present application, terminal disclaimers regarding the '504 patent, the '927 patent are filed with this response.

B. Response to the Section 112 Rejection of Claims 6-13

Claims 6-13 were rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement. As previously recited, claims 6, 9, 12 and 16 were amended to clarify certain features of these claims, and more specifically, to clarify aspects of the excitation source and the receiver. As claimed, the excitation source can have an adjustable frequency and the receiver can adaptably adjust the excitation interval and/or observation interval to match the resonant frequency of the marker. As further disclosed in the specification, the receiver is adaptable to work in coordination with the excitation source to tune the system to the specific characteristics of the marker. "Specifically, the excitation source 202 has an adjustable frequency that can be tuned in accordance with analysis made by the receiver 208." (Specification, page 15) As further noted in the specification "[b]ecause of various manufacturing variances and other factors, the marker may not have an accurately predictable resonant frequency." (Specification, page 15) "Thus, the receiver identifies the resonant frequency of the marker and provides that information to the excitation source. The excitation source can then provide an exciting pulse at a frequency that is closely matches to the resonant frequency of the marker." (Specification, page 15) Applicants respectfully submit that the claims as amended clarify over the cited art and with the submission of the terminal disclaimers, these claims are now in condition for allowance.

C. Response to the Section 103(a) Rejection of Claim 16 (Dimmer and Rodgers)

Claim 16 was rejected under 35 U.S.C. § 103(a) over the combination of Dimmer and Rodgers. The Office Action notes that "Dimmer fails to explain how the generator is aware of the specific frequency needed." (Office Action, Page 10) Without agreeing to the Office Action's characterization of the cited art, and solely for purposes of this Response, applicants adopt this characterization of Dimmer and respectfully argue that the object identification system with adaptive transceivers of Rodgers is not relevant to how the generator is aware of the specific frequency needed. Furthermore, *contrary* to

the conclusory statement in the Office Action that "it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the specifics of a second frequency determination for communications, as taught by Rodgers, with the system of Dimmer in order to 'establish communication with a single transceiver at a frequency better suited for ... conducting an interrogation protocol for identifying the transceiver ...'", applicants respectfully note that the failure of the prior art to even recognize the problem of a second frequency determination in a single transceiver is evidence of non-obviousness. Furthermore, applicants respectfully propose that a telephonic Examiner's Interview would allow the applicant to clarify the claims in view of the prior art in order to advance prosecution of the application.

Conclusion

In view of the foregoing, the pending claims comply with 35 U.S.C. § 112 and are patentable over the applied art. The Applicants accordingly request reconsideration of the application and respectfully submit that the application is in condition for allowance. If the Examiner has any questions or believes a telephone conference would expedite prosecution of this application, the Examiner is encouraged to contact Susan Betcher at (206) 359-6088.

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Respectfully submitted,

By

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